

ORDINANCE NO. O2014-017

AN ORDINANCE of the City Council of the City of Tumwater, Washington related to animals, and amending Chapter 6.04 of the Tumwater Municipal Code (amending Ordinance Nos. 095-044 and O2006-003).

WHEREAS, the cities of Olympia, Lacey and Tumwater and Thurston County are parties to an interlocal agreement for joint animal services operations, including operation of the animal shelter and the conduct of animal protection and control activities; and

WHEREAS, each of the jurisdictions has nearly identical ordinances outlining the regulations and penalties for keeping dogs, cats and other pet animals;

WHEREAS, the animal services director has requested and the Joint Animal Services Commission (JASCOM) has reviewed changes; and

WHEREAS, the City Council finds it is in the best interest of the citizens of Tumwater to adopt the changes proposed jointly by the parties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 6.04.050 of the Tumwater Municipal Code, "Regulations relating to pet animals," is hereby amended to read as follows:

6.04.050 Regulations relating to pet animals.

Any person who harbors, keeps, maintains or has temporary custody of a pet animal shall be responsible for the behavior of such animal whether the person knowingly permits the behavior or not. Such person's animal shall be subject to impoundment for violations of the terms of this section. Such person shall violate the terms of this section if:

A. Pet Animal at Large. Such person's pet animal is at large as defined in TMC 6.04.030(D); provided, however, this section shall not prohibit the owner and pet animal from participating in an organized show or training, exercise or hunting session in locations designated and authorized for that purpose. A pet animal at large is a civil infraction as defined in TMC 6.04.080.

B. Nuisance Pet Animal. Such person's pet animal is a nuisance pet animal as defined in TMC 6.04.030(T). Nuisance pet animal is a civil infraction as defined in TMC 6.04.080.

C. Pet Animal on Public Property. It is a civil infraction as defined in TMC 6.04.080 when such person's pet animal is on public property such as a public park, beach or school ground and:

1. Is not on a leash held by a person who is able to maintain physical control; or

2. Proper safeguards have not been taken to protect the public and property from injury or damage from said animal; or

3. The presence of the animal on such property is in violation of additional specific restrictions which have been posted. Such restrictions shall not apply to guide dogs for the visually impaired or service animals for the physically handicapped where being off leash is necessary to the service, or to dogs on fenced areas of public property specifically designated by the city of Tumwater as not requiring a leash.

D. Injury to a Person or Animal. Such person's pet animal, domestic animal, or exotic animal causes injury to a person or animal (see also potentially dangerous dog or dangerous dog, TMC 6.04.070(F), the provisions of which may also apply). Injury to a person or animal is a misdemeanor as set forth in TMC 6.04.080(D).

E. Failure to Possess Removal Equipment or to Remove Fecal Material. Such person (1) fails to possess in a public park the equipment or material necessary to remove animal fecal material when accompanying a pet animal, or (2) fails to remove animal fecal material when accompanying a pet animal off the owner's property. Failure to possess removal equipment or to remove fecal material is a civil infraction as defined in TMC 6.04.080.

F. Failure to Sterilize an Adopted Pet Animal. Such person, when adopting a pet animal from the animal services shelter, fails to have the pet sterilized within the time period specified in the written agreement, unless specifically recommended by a veterinarian in writing, or in cases of verifiable placement within a governmental law enforcement agency. Failure to sterilize an adopted pet animal is a civil infraction as defined in TMC 6.04.080.

G. Failure to Provide Humane Care. Such person fails to provide a pet animal, domestic animal, or exotic animal with humane care as defined in TMC 6.04.030(M). Failure to provide humane care is a misdemeanor as set forth in TMC 6.04.080.

H. Failure to Meet Terms of Quarantine. Such person fails to accept or to meet the terms of the quarantine notice served pursuant to Thurston County health department regulation after an animal has bitten a human. Failure to meet terms of quarantine is a misdemeanor as set forth in TMC 6.04.080.

I. Menacing Animal. Such person harbors, keeps or maintains any animal that engages in menacing behavior as defined in TMC 6.04.030(R). Violation of this subsection is a civil infraction as defined in TMC 6.04.080.

(Ord. O2006-003, Amended, 01/17/2006; Ord. O95-044, Added, 05/07/1996)

Section 2. Section 6.04.070 of the Tumwater Municipal Code, "Potentially dangerous dog or dangerous dog," is hereby amended to read as follows:

6.04.070 Potentially dangerous dog or dangerous dog.

A. Classification. The animal services director or designee shall have authority to classify potentially dangerous dogs and dangerous dogs. The authority to classify an animal as potentially dangerous or dangerous is in addition to any civil or criminal penalty as set forth herein. The animal services director may find and declare an animal potentially dangerous or dangerous if there is reasonable cause to believe that the animal's action falls within the descriptions which follow. The finding must be based upon the written complaint of a person who has pertinent information and who is willing to testify that the dog has acted in a manner which may cause it to be classified as a dangerous dog or a potentially dangerous dog; and one of the following:

1. Reports on file with animal services ~~about~~show previous aggressive behavior by the dog; or
2. Actions of the dog have been witnessed by any animal services officer or law enforcement officer; or
3. Other substantial evidence.

B. Actions Resulting in Designation. The following actions may result in the designation as a potentially dangerous dog or dangerous dog:

1. A dog shall be declared potentially dangerous if, unprovoked, it:
 - a. Inflicts a bite or bites on a human or a pet or domestic animal either on public or private property; or
 - b. Chases or approaches a person upon the streets, sidewalks or any public grounds or behaves in a menacing manner or assumes an apparent attitude of attack; or
 - c. Has a known propensity to attack unprovoked, or to cause injury or otherwise to threaten the safety of humans or pet or domestic animals.
2. A dog shall be declared dangerous when, according to the records of animal services, the dog has:

a. Inflicted severe injury or substantial bodily harm on a human being without provocation on public or private property; or

b. Killed a pet or domestic animal without provocation while off the owner's or keeper's property; or

c. Aggressively bitten, attacked or endangered the safety of humans or pet or domestic animals after previously having been found to be potentially dangerous, and the owner or keeper has received written warning.

3. A dog shall not be declared potentially dangerous or dangerous if:

a. The threat, injury or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner or keeper of the dog; or

b. The person was tormenting, abusing or assaulting the dog or has, in the past, been observed or reported to have tormented, abused or assaulted the dog; or

c. The person was committing or attempting to commit a crime; or

d. Another pet animal or domestic animal has entered the property of the owner of the dog without invitation; or

e. The dog, when on a leash, is responding to attack by another pet or domestic animal whether on or off the owner's premises.

C. Declaration as Potentially Dangerous or Dangerous Dog.

1. Notice of Declaration. The declaration of a dog as potentially dangerous or dangerous shall be in writing and shall be served on the owner or keeper in one of the following methods, with a copy to the complaining citizen:

a. ~~Regular and~~ Certified mail, return receipt requested, to the owner or keeper's last known address; or

b. Personally; or

c. If the owner or keeper cannot be located by one of the first two methods, by publication in a newspaper of general circulation as designated in Tumwater Municipal Code ~~in the county according to TMC-1.08.010.~~

2. Contents of Declaration. The declaration shall state at least:

a. The description of the dog;

b. The name and address of the owner or keeper of the dog;

c. The whereabouts of the dog if it is not in the custody of the owner or keeper;

d. The facts upon which the declaration of potentially dangerous or dangerous is based;

e. The availability of a hearing review of the declaration in case the person objects to the declaration, provided a written request for a hearing review is made within ten days of mailing the declaration or the date of publication; ~~pursuant to subsection (C)(3) of this section;~~

f. The availability of an appeal of the declaration to the animal services hearing examiner, if a written request for such an appeal is filed with the director within ten days after receipt of the written findings pursuant to the review of the declaration.

~~fg.~~ The restrictions placed on the dog as a result of the declaration of potentially dangerous or dangerous;

~~gh.~~ The penalties for violation of the restrictions, including the possibility of destruction of the dog, ~~the costs of confinement and control of the dog, and imprisonment or fining of the owner or keeper.~~

3. Objection to Declaration. If the owner or keeper of the dog or the complaining citizen wishes to object to the declaration of a dog as potentially dangerous or dangerous; ~~they owner or keeper~~ may, within ten days of receipt of the declaration, or within ten days of publication of the declaration pursuant to subsection (C)(1)(c) of this section, request a review of the declaration with hearing before the animal services director. The hearing review will be scheduled by the director or designee within a reasonable time ~~of after~~ receipt of the request for a hearing review. Pending ~~such hearing~~ the review, the owner or keeper of such dog shall comply with any restrictions specified in the declaration.

4. ~~Hearing on~~ Review of Declaration.

a. If the director finds that there is insufficient evidence to support the declaration, it shall be rescinded, and the restrictions imposed thereby annulled. ~~no restrictions shall be imposed.~~

b. If the director finds sufficient evidence to support the declaration, the director may impose the same or different restrictions.

c. The decision of the director to rescind the declaration or to affirm the declaration ~~The designation~~ as potentially dangerous or dangerous, and any resulting restrictions shall be stated in a document containing written findings sent to the owner or keeper of the dog via regular mail, ~~and certified mail, return receipt~~

requested or delivered in person to the owner. A copy of such document shall be provided to the complaining citizen in the same manner.

~~d. The owner or keeper of a dog designated as dangerous will be required to obtain a certificate of registration as a dangerous dog pursuant to the provisions of subsection E of this section.~~

5. ~~Appeal of Decision on Declaration.~~

~~a. After the animal services director's review of the declaration, the owner or keeper of a dog declared to be that is designated potentially dangerous or dangerous or the complaining citizen may appeal the designation made by the director declaration to the joint animal services commission the animal services hearing examiner pursuant to the rules and procedures established by the hearing examiner. The owner or keeper of a dog designated potentially dangerous or dangerous must submit a~~ A written request for such an appeal shall be filed with to the director within ten days of receipt of the written findings as specified in subsection (C)(4)(c) of this section.

a. In addition to any other requirements, the written appeal shall contain the following:

1. A brief statement as to how the appellant is significantly affected by or interested in the decision of the director;

2. A brief statement of the appellant's issues on appeal, noting specific exceptions and objections to the declaration;

3. The relief requested, such as reversal of the declaration;

4. Signature, address, and phone number of the appellant, and name and address of appellant's designated representative, if any.

b. Except as provided in this chapter, the appeal shall proceed in accordance with the provisions established by the animal services hearing examiner for appeals.

c. Notice of the appeal hearing shall be mailed to the appellant's address as listed on the written appeal.

d. At the hearing, the scope of evidence and the scope of review shall be de novo.

e. The burden shall be on the animal control authority to prove, by a preponderance of the evidence, that the animal is a dangerous animal or potentially dangerous animal as defined in this chapter.

f. The hearing examiner shall render a decision on the appeal within 30 calendar days following the conclusion of all testimony and hearings and closing of the record unless a longer period of time is agreed to by the parties. The hearing examiner may affirm, reverse or modify the decision of the animal services director.

g. The decision of the hearing examiner shall be considered final. Appeals of decisions by the hearing examiner shall be appealable to Thurston County Superior Court.

~~b. The owner or keeper shall be notified of the time and place for the appeal.~~

~~c. While the appeal is pending, the owner must comply with any restrictions specified in the declaration by the director. When in a vehicle, the dog must be securely restrained to prevent escape.~~

~~d. The joint animal services commission may affirm, reverse or modify the findings of the director. The decision of the joint animal services commission shall be sent by regular and certified mail, return receipt requested, to the owner/keeper and complaining citizen.~~

D. Control and confinement of potentially dangerous or dangerous dogs includes:

1. Potentially ~~D~~dangerous ~~D~~dogs.

a. Must be securely leashed and under the control of a person physically able to restrain and control the animal when away from the premises of the owner or keeper; or

b. While on the ~~premises~~property of the owner or keeper must be securely restrained and controlled by means of a physical device or structure such as a tether, trolley system, or other physical control device or any structure made of materials ~~sufficiently~~ strong enough to adequately and humanely confine the dog in a manner which prevents it from escaping the ~~premises~~property; and

c. Must be kept in conformance with other restrictions which may be set forth in the ~~designation~~notice classifying the dog as potentially dangerous.

2. Dangerous ~~D~~dogs.

a. Must be securely muzzled and leashed and under the control of a person physically able to ~~restrain and control~~ the dog if the dog is away from the ~~premises~~property of the owner or keeper; or

b. While on the ~~premises~~property of the owner or keeper, the dog must be securely confined inside a locked building, kennel, pen, or other structure having secure sides, bottom, and top, suitable to prevent the entry of young children and designed to prevent the animal from escaping; and

c. Must be kept in conformance with other restrictions which may be set forth in the ~~designation~~declaration classifying the dog as dangerous.

d. The owner or keeper of a dog designated as dangerous will be required to obtain a certificate of registration as a dangerous dog pursuant to the provisions of 6.04.070(E).

E. Certificate of Registration as ~~D~~dangerous ~~D~~dog. The animal services director shall issue a certificate of registration to the owner or keeper of a dangerous dog if the owner or keeper presents sufficient evidence of:

1. A proper enclosure to confine the dog, which meets the requirements of ~~subsection 6.04.070(D) of this section~~, and the posting of the ~~premises~~property with a clearly visible warning sign that there is a dangerous dog on the property; and

2. A surety bond issued by a surety insurer qualified under Chapter 48.28 RCW, in a form acceptable to the animal services director in the sum of at least \$250,000, payable to any person injured by the dangerous dog, or a policy of liability insurance issued by an insurer qualified under RCW Title 48 in the amount of at least \$250,000, insuring the owner or keeper for any injuries inflicted by the dangerous dog; and

3. Such other identifying information as may be required by the animal services director; and

4. Certification that the owner or keeper is aware of and understands the nature of the dog and the provisions of the law which apply to it; and

5. Payment of an annual registration fee for a dangerous dog as designated in the city fee resolution adopted by the city council~~in the sum of \$125.00~~, which shall be in addition to the annual license fee.

F. Violations ~~F~~following declaration of a ~~Designation as P~~potentially ~~D~~dangerous or Ddangerous ~~D~~dog penalties. — Penalties.

1. Any potentially dangerous or dangerous dog that is in violation of the restrictions contained in ~~within~~ this section or of restrictions imposed as part of the declaration of potentially dangerous or dangerous dog, may be seized and impounded at the expense of the dog owner or keeper. ~~Any dangerous dog that is in violation of the restrictions contained within this section or of restrictions imposed~~

~~as part of the declaration of dangerous dog shall be seized and impounded at the expense of the dog owner. The owner or keeper shall be~~must pay~~responsible for paying the costs of impoundment~~confinement~~and control of the dog. The director or his/her designee must serve notice upon the dog owner or keeper in person or by regular and certified mail, return receipt requested, specifying the reason for the impoundment of the dangerous dog, that the owner or keeper is responsible for payment of the costs of impoundment, and that the dog will be euthanized~~
~~destroyed in an expeditious and humane manner if the deficiencies for which the dog was impounded are not corrected within twenty days, and specifying the appeal procedure for a decision to destroy the animal. The animal control authority shall destroy the impounded dangerous dog in an expeditious and humane manner if any deficiencies required by this subsection are not corrected within twenty days of notification. The appeal procedure for a decision to~~euthanized~~destroy the animal is as follows:~~

a. The owner or keeper of a dog that will be ~~destroyed~~euthanized according the provisions of this subsection may appeal that decision to the ~~joint animal services hearing examiner~~commission. The owner or keeper must submit a written request for an appeal to the director within ten days of receipt of the notice referenced in this subsection.

b. The owner or keeper shall be notified of the time and place for the appeal. Failure to appear at the specified time will result in an order by the ~~commission~~animal services hearing examiner affirming the director's decision.

c. The ~~joint animal services hearing examiner~~commission may affirm, reverse or modify the decision of the director. The decision of the hearing examiner~~commission~~ shall be sent to the owner or keeper by regular and certified mail, return receipt requested.

2. ~~Any person~~Violationing of the provisions of this section relating to keeping, securing or confining of potentially dangerous dogs shall constitute a misdemeanor ~~as set forth in TMC 6.04.080(D)~~, unless state law provides for a higher penalty. In addition, the person's potentially dangerous dog may be impounded by animal services, at the discretion of the director of animal services, or his or her designee.

3. ~~Any person~~Violationing of the provisions of this section relating to keeping, securing or confining of dangerous dogs shall constitute a gross misdemeanor ~~as set forth in TMC 6.04.080(E)~~, unless state law provides for a higher penalty. In addition, the person's dangerous dog ~~shall~~may be impounded by animal services, at the discretion of the director of animal services, or his or her designee.

G. Other Dangerous Pet Animals. The animal services director or designee shall have authority to classify other pet animals as potentially dangerous

or dangerous under the same criteria as used in Section 6.04.070~~subsection A of this section~~ for dogs. Such designation will be based on specific actions by the animal such as those noted in Section 6.04.070(B)~~subsection B of this section and ‡~~The animal services director or designee shall have authority to require the owner or keeper of such pet animal to take certain actions to control or confine the pet animal ~~such as those specified for dogs in subsection D of this section~~. Once an pet animal has been declared potentially dangerous or dangerous, any violations of the provisions of this section will be handled in the same manner as violations under Section 6.04.070(F)~~subsection F of this section~~.

(Ord. O2006-003, Amended, 01/17/2006; Ord. O95-044, Added, 05/07/1996)

Section 3. Corrections. The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.


Section 4. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 5. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 6. Effective Date. This ordinance shall become effective thirty (30) days after passage, approval and publication as provided by law

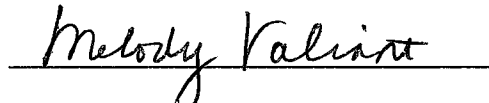
ADOPTED this 21st day of October, 2014.

CITY OF TUMWATER



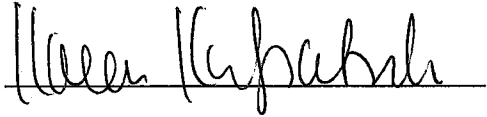
Pete Kmet, Mayor

ATTEST:



Melody Valiant, City Clerk

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read "Karen Kirkpatrick", is written over a horizontal line.

Karen Kirkpatrick, City Attorney

Published: 10-23-2014

Effective Date: 11-22-2014